ESTATE & TRUST AGENCIES (1927) LTD. v. TUNGKU MERIAM BINTE ALMARHOUM SULTAN AHMAD OF PEKAN & ANOR.

[O. C. J. (Brown J.) June 25, 1948]

[Singapore — Originating Summons No. 75 of 1948]

Trust — Construction — Whether interests are vested or contingent — Meaning of word "issue".

This was an Originating Summons taken out to determine a number of questions relating to a Trust Deed.

The first question was whether the first defendant is entitled to a one-half share or to one-third share of the income. The deed provided that after the death of Sultan Ahmad the trustees were to hold the property upon trust to divide the income "among the said Tungku Omar and Tungku Meriam or their issue as shall from time to time be living during their respective lives in the proportion of two shares to males and one share to females but so that the children or child of a deceased child shall take nothing during their or his or her parents' lifetime."

Held: it was clear that the settlor intended to adopt the rule of Muslim intestacy that males take two shares and the females one share and that therefore the first defendant is entitled to a one-third share of the income from the settled properties.

Held also (in answer to the second question): the corpus of the settled properties, upon vesting vests as to one third share thereof in the children of the first defendant.

The third question was whether the shares in the corpus of the settled properties of the children of Tungku Omar and/or Tungku Meriam who attain the age of twenty-one become vested on the attainment of that age. The deed provided that the trustees were to hold the property in trust for the Sultan's grandchildren, and the material part of the deed reads as follows:

"Upon trust, nevertheless at the expiration of the period of twenty-one years from the death of the survivor of the several persons seven in number whose names appear in the second schedule hereto or at the time when the Sultan's said children Tungku Omar and Tungku Meriam being dead the youngest child or such children who shall live to attain the age of twenty-one years shall attain that age (whichever shall first happen) for the grandchildren being the children of the said Tungku Omar and Tungku Meriam as tenants in common . . . . . and if there be only one such grandchild then the whole to be for that one grandchild."

Held: the fact that the gift is carried on to a single member of a class is an indication that the gift was intended to be contingent and that in this case the vesting of the shares does not take place till the happening of the earliest contingency.

The last question was whether the word "issue" of Tungku Omar and Tungku Meriam comprise all the descendants of Tungku Omar and Tungku Meriam or whether it is limited to their children.

Held: in this case the word "issue" was intended to include only the children of Tungku Omar and Tungku Meriam.

Cases referred to:—

(1) *Leeming v. Sheratt* 67 E.R. 6.

(2) *Judd v. Judd* 57 E.R. 1095.

ORIGINATING SUMMONS.

W. Munro for the plaintiffs.

K. A. Seth for the 1st defendant.

R. H. Green for the 2nd defendant.

Brown J. : — In this Originating Summons I have to determine questions 1, 2, 3 and 3A at this stage.

Question 1 is whether the first defendant is entitled to one half share or to one third share of the income. The deed provides that after the death of the Sultan the trustees are to hold the property upon trust to divide the income :—

> Among the said Tungku Omar and Tungku Meriam or their issue as shall from time to time be living during their respective lives in the proportion of two shares to males and one share to females but so that the children or child of a deceased child shall take nothing during their or his or her parents' lifetime.

It is clear that in the case of the issue of the Sultan's two children whose names appear and who are the two defendants in these proceedings, the settlor is adopting the rule of Mohammedan intestacy that the males take two shares and the females one share. This rule is also followed in an earlier passage of the deed dealing with the corpus. It is further followed in a later passage dealing with the total failure of issue of the Sultan's two children. These considerations lead to the conclusion that the general plan of this settlement was to follow the rule of two shares to a male and one to a female. I have to ask myself whether there is anything in the deed to indicate that in the case of the Sultan's two children Tungku Omar and Tungku Meriam, an exception to the general plan is to be made.

It is stated in the preamble that the trust premises were purchased "for the benefit of the Sultan's two children Tungku Omar and Tungku Meriam". I do not think that affords any assistance upon the question of the proportion of shares by which each is to benefit. And if an exception to the general plan was intended to be made in the case of Tungku Omar and Tungku Meriam I should expect it to be made expressly.

The material passage which I have quoted above does not state that the income is to be divided between Tungku Omar and Tungku Meriam, and I think that Mr. Green has rightly stressed that the word used is "among". It is to be divided "among the said Tungku Omar and Tungku Meriam or their issue". The word "or" is clearly correct because of the later words whereby "the child or children of a deceased child shall take nothing during their or his or her parents' lifetime". The income then is to be divided first among Tungku Omar and Tungku Meriam. After the death of one of them, it is to be divided among the survivor and the children of the deceased who would collectively take only the share which their deceased parent would have taken if living. The deed having stated that the income is to be divided among

these persons, the question at once arises in what proportions is the division to be made? Only one answer to that question is to be found in the deed. It is to be divided "in the proportion of two shares to males and one share to females". Upon the death of the Sultan Tungku Omar should have taken two shares, and Tungku Meriam one. Upon Tungku Omar's death his eleven children collectively should have taken their father's two shares leaving Tungku Meriam with her one share. The answer therefore to *Question 1* is that Tungku Meriam is entitled to a one-third share of the income from the settled properties.

It was agreed that the answer to *Question 2* must follow the determination of *Question 1*. The corpus of the settled properties, upon vesting, vests as to one-third shares thereof in the children of the first defendant.

Question 3 is whether the shares in the corpus of the settled properties of the children of Tungku Omar and/or of Tungku Meriam who attain the age of twenty-one become vested on the attainment of that age. The trustees are to hold the property in trust for the Sultan's grandchildren, and the material part of the deed reads as follows :—

> Upon trust, nevertheless at the expiration of the period of twenty-one years from the death of the survivor of the several persons seven in number whose names appear in the second Schedule hereto or at the time when the Sultan's said children Tungku Omar and Tungku Meriam being dead the youngest child or such children who shall live to attain the age of twenty-one years shall attain that age (whichever shall first happen) for the grandchildren being the children of the said Tungku Omar and Tungku Meriam as tenants in common . . . . . and if there be only one such grandchild then the whole to be for that one grandchild.

Mr. Seth has propounded three possible ways of construing this trust. Firstly, that every grandchild takes a vested interest at birth. That is the construction contended for by Mr. Munro on behalf of the trustees. Secondly that every grandchild takes a vested interest on attaining the age of twenty-one. That is the construction contended for by Mr. Green on behalf of the second defendant. Thirdly, that the vesting does not take place until the happening of the earlier of the two contingencies mentioned. That is the construction contended for by Mr. Seth on behalf of the first defendant.

The difficulty which I find in holding that the interest of each grandchild vests when he attains the age of twenty-one is that the words containing the gift make no such qualification. The only mention of the age of twenty-one is in the second contingency, and it is a condition precedent to the happening of the second contingency that both Tungku Omar and Tungku Meriam should be dead. The beneficiaries are stated to be "the grandchildren being the children of Tungku Omar and Tungku Meriam . . . . . and if there shall be only one such grandchild then the whole to be for that one grandchild." There are no qualifying words regarding age, as in the case of *Leeming v. Sheratt*[1]. In that case the division among the children was to be made as soon as the youngest child attained the age of twenty-one, and it was held that as the testator had postponed the division until the youngest child attained that age he must have intended that no child who did not attain that age should benefit. It followed that the testator intended that every child who attained that age should benefit, though his possession was postponed until the youngest child attained that age; and it was held that the share of each child vested upon his attaining the age of twenty-one, and if he died before the time for division, his share passed to his personal representative. But in this deed the gift is to the grandchildren simpliciter. Therefore it seems to me that if these interests have vested they can only have vested upon the birth of each grandchild, possession being postponed until the happening of the earlier of the two contingencies. Whether they have in fact vested must depend upon the question of whether the settlor intended it as a condition precedent that the grandchildren should survive the happening of the earlier contingency.

Mr. Seth, in support of his contention that the interests are contingent, relies upon the words "and if there shall be only one such grandchild, then the whole to be for that one grandchild." He says that the fact that the gift is carried on to a single member of a class is an indication that the gift was intended to be contingent. And in support of that he has referred to a passage from *Jarman* Vol. 2 page 1396, which cites the case of *Judd v. Judd*[2] as an example. But in that case the gift was carried on to a single member of a class "upon his or her attaining the age of twenty-five". The gift was to the children of S., after the death of S., upon their respectively attaining the age of twenty-five years, and in case S. should leave but one child her surviving then the whole was to become the property of that one child upon his or her attaining the age of twenty-five. And it was held that as the gift, in the case of only one child surviving, was clearly contingent upon

that child attaining the age of twenty-five years, the same construction must be put on the gift in the case of her leaving more than one. *Judd v. Judd*[2] is therefore not on all fours with this case. But *Jarman* would appear to be clear in his view that in carrying on the gift to a single member of a class an intention to make the gift contingent is manifest, and he does not qualify his opinion by limiting it to cases such as *Judd v. Judd*[2] where there are words applicable only to that final member of the class, which themselves import contingency.

At the time when this settlement was made Tungku Omar and Tungku Meriam were small children. So far as they were concerned, marriage and children were all in futuro. Three things are I think clear. Firstly, the settlor envisaged the probability that these two young children would in time have more than one child between them. Secondly, the object of the settlor's bounty was all the Sultan's grandchildren. Thirdly, he intended that they should not enjoy it for a very long time. And he must I think have envisaged the possibility that in that long period of time, during which he insisted on keeping them out of possession, events might happen which, if the gift was not made conditional upon the happening of the earlier contingency, would result in at least some part of his bounty being enjoyed by some person or persons who were not grandchildren of the Sultan. Thus he says that if upon the expiration of the period covered by the earlier contingency there shall be only one such grandchild, then the whole is to be for that one grandchild. I attach importance to the word "whole". He carried on the gift to a single member of the class, and he says that the whole is to be for that single member. That is to me an indication that he never intended that if a grandchild died before the expiration of the period his share should pass to his personal representative. He intended that such share should remain to be later enjoyed by the grandchildren who were left, and that if upon the expiration of the period only one grandchild was left then that grandchild should enjoy the whole. And if all the grandchildren should fail, provision for the disposal of the property is made on page 3 of the deed. In my opinion the answer to *Question 3* is in the negative and I agree with Mr. Seth's contention that vesting does not take place until the happening of the earlier contingency.

Question 3A is whether the word "issue" of Tungku Omar and Tungku Meriam comprise all the descendants of Tungku Omar and Tungku Meriam or whether it is limited to their children. The rule is that *prima facie* the word "issue" is to be given the more extended meaning of descendants and is not to be restricted to the children, unless the context shews an intention to the contrary. In this deed the word "issue" is used in three places. It is used in the trust of income whereby the income is to be paid to "Tungku Omar and Tungku Meriam or their issue". It is used in the forfeiture proviso whereby the share of the income of a person who attempts to encumber or assign his share is to be applied for his personal maintenance or support or of the support of "his wife and issue" as the trustees see fit. And it is used in the proviso dealing with the disposal of the property "if there shall be a total failure of issue of Tungku Omar and Tungku Meriam". In the last passage it can only mean the children. From the authorities which have been cited it would appear that there is no clear rule that where in a document a word has a clear and definite meaning when used in one part but not where used in another, the word must necessarily bear the same meaning in the latter case as in the former. No doubt in cases of doubt where the arguments in favour of one or other of two meanings are more or less equal, the fact that the word has clearly been used in another part of the document to express a clear and certain meaning is a factor to be taken into account. But here I am prepared to decide the point upon the ground that the trust of the corpus is confined to the children of Tungku Omar and Tungku Meriam, and that if the settlor had intended that persons who would not be entitled to the corpus should share the enjoyment of the income with the persons who will be entitled to the corpus he would have made that intention clear. That he used the word "issue" as meaning children in the final passage dealing with the failure of vesting shews that he attached no significance to the word as denoting descendants, and confirms me in my view that he intended to limit the enjoyment of the income to Tungku Omar and Tungku Meriam or their children.

The costs of this Summons to be paid out of the corpus of the properties, to be taxed as between solicitor and client.

Order accordingly.

Solicitors: *Allen & Gledhill; Sisson & Delay; Braddell Bros.*